IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.6 OF 2007

1. Mr. Licaerdo Fernandes,
2. Mrs. Cecelia B. Fernandes,
3. Mr. Santan Fernandes,
All major of age, Indian National,
resident of Dando, Candolim, Bardez, Goa. ..... Petitioners.

V/s.

1. Mr. Jacinto S. D'Souza,
2. Mr. Ivy Mary Pinto,
3. Mr. Robert Denis Pinto,
4. Ms. Leticia Prisca Pinto,
5. Mr. Allan Ian Pinto
6. Mr. David Arun Pinto,

All major of age, resident of
House No.E-74,
Campal, Panaji, Goa. ..... Respondents.

Mr. Nilesh Shirodkar, Advocate for the petitioners.

Mr. V. P. Thali, Advocate for the respondents.

CORAM : R.S. MOHITE, J.

DATE : JULY 12, 2007.

ORAL JUDGMENT :

Heard both sides. Rule. By consent, rule made returnable forthwith.

2. This is a petition impugning an order dated 2.12.2006 passed by the Civil Judge, Jr. Division, Mapusa rejecting an application for condonation of delay in taking the written statement of the defendant Nos. 1, 2 and 3 on record in Regular Civil Suit No.63/06/C.

3. The facts of the case are that in a suit filed by the plaintiffs, the summons to answer the plaint were issued on 22.3.2006. After receipt of the summons, the defendants appeared and filed their appearance through an Advocate on 28.3.06. Though the exact date of service of summons is not on record before this Court, it is clear that the summons were served between 22.3.06 and 28.3.06. The extended 90 days period for filing the written statement would, therefore, expire between 21.6.06 and 28.6.06. The written statement along with the application for condonation of delay ultimately came to be filed on 22.8.06. By the impugned order dated 2.12.2006, the trial Court refused to condone the delay and consequently, did not permit the filing of the written statement on record.

4. The issue as to whether the Court has power to accept the written statement after expiry of the period of 90 days is now settled in the case of ***Rani Kusum (Smt.) vs. Kanchan Devi (Smt.) and ors.,*** reported in (2005) 6 SCC 705 where the Court has taken a view that not permitting filing of the

written statement is a rule, but in appropriate cases, the Court does have power to permit filing of the written statement even after the period of 90 days. A similar view has been taken by the Supreme Court in a subsequent Judgment in the case of ***Shaikh Salim Haji Abdul Khayumsab v. Kumar & Ors.*** reported in AIR 2006 SC 396.

5. In the facts of this case, it is seen that after filing their appearance on 28.3.06, the defendants made a grievance that though they were served with the summons, they were not furnished the copies of the plaint and the documents. This compelled the trial Court to pass an order of handing over fresh copies of the plaint and the documents to the defendants. These documents were admittedly handed over in pursuance of the order of the Court dated 18.4.06 on 27.4.06. It further appears that after 90 days period was over, the matter was fixed on 8.8.06 and on which date, admittedly, the Court was not sitting.

6. Taking into view, the peculiar facts of this case, I am inclined to allow this petition, subject to costs.

7. For the aforesaid reasons, the Rule is made absolute in terms of prayer clauses (a) and (b) of the petition subject to payment of costs of

Rs.5,000/- to the plaintiffs. The costs will be deposited in the trial Court within a period of two weeks from today. The payment of costs is a condition precedent. On deposit being made, the plaintiffs will be at liberty to withdraw the amount. Petition stands disposed off finally.

R.S. MOHITE, J.

ssm.